

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
 Applicant,)
)
v.)
)
DOLGENCORP,)
)
 Respondent.)

**CIVIL ACTION NO.
1:07-cv-06672**

**MEMORANDUM IN SUPPORT OF MOTION TO STAY MAGISTRATE
JUDGE’S ORDER**

Respondent Dolgencorp, Inc. (“Dolgencorp”) submits this memorandum in support of its motion to stay.

BACKGROUND

The Equal Employment Opportunity Commission (“EEOC”) instituted this action seeking enforcement of an administrative subpoena it served on Dolgencorp, Inc. (Docket Entry # 1.) On December 7, 2007, District Judge George M. Marovich recommended to the Executive Committee that this action be referred to Magistrate Judge Sidney I. Schenkier. (Docket Entry # 8.) On December 10, 2007, Chief Judge James F. Holderman referred the matter to Magistrate Schenkier. (Id.)

After several hearings on the matter, on February 12, 2008, Magistrate Schenkier granted, in part, the EEOC’s request that its subpoena be enforced. (Docket Entry # 29.) Specifically, Magistrate Schenkier ordered Dolgencorp to provide the EEOC with

“information, for each month during the period from 01/01/04 through 04/01/07, sufficient to identify within Division 5 of Dolgencorp, Inc.: (1) by race and job title, the number of employees who received contingent offers of employment, and (2) by race and job title, the number of employees whose contingent offers of employment were revoked due to criminal background checks.” (Docket Entry # 29.) Magistrate Schenkier further ordered Dolgencorp to produce the information by March 13, 2008 and ordered Dolgencorp to pay the EEOC’s costs (but not attorneys’ fees) associated with bringing this action. (Id.) This order was dispositive of all matters before the Court.

Magistrate judges are generally not permitted to enter orders regarding dispositive matters.¹ Thus, Magistrate Schenkier’s February 12, 2008 order must be viewed as a report and recommendation, which only becomes effective when the district judge enters a final order. Thus, Dolgencorp requests that the Court stay Magistrate Schenkier’s order until a final order is entered by the District Court Judge.

LAW AND ARGUMENT

District judges may designate non-Article III magistrate judges to determine non-dispositive matters. Fed. R. Civ. Pro. 72(b); 28 U.S.C. § 636(b)(1)(B) *United States v. Brown*, 79 F.3d 1499, 1503 (7th Cir. 1996); *Retired Chicago Police Ass’n v. City of Chicago*, 76 F.3d 856, 868 (7th Cir. 1996). As to dispositive matters, however, magistrate judges may only issue reports and recommendations to the district judge for final determination. Fed. R. Civ. Pro. 72(b); 28 U.S.C. § 636(b)(1)(B); *Brown*, 79 F.3d at 1503; *City of Chicago*, 76 F.3d at 868. Such reports and recommendations are “non-

¹ Magistrate judges may issue orders on dispositive matters if the parties consent. 28 U.S.C. § 636(c). Neither party gave consent in the present case.

self-operating’ and thus not valid until the district judge accepts the magistrate’s report and recommendation and enters an order.” *Brown*, 79 F.3d at 1503.

Here, the EEOC sought enforcement of an administrative subpoena and costs. Since enforcement of the administrative subpoena is dispositive of this entire matter, Magistrate Schenkier’s order must be viewed as a report and recommendation, which does not become effective until so ordered by the district judge. *National Labor Relations Board v. G. Rabine & Sons, Inc.*, 2001 WL 1772333 (N.D. Ill. Sept. 10, 2001) (attached as Ex. 1); Fed. Civ. Pro. 72(b); 28 U.S.C. § 636(b)(1).

Therefore, this Court should stay Magistrate Schenkier’s order until Dolgencorp has had an opportunity to file objections, as permitted by 28 U.S.C. § 636(b)(1), and the district court enters a final order.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of February, 2008, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

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